

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 1293

IN THE MATTER OF:

Application of AIRWAY GROUND) Served: December 28, 1973
TRANSPORTATION SERVICES, INC.,)
for Temporary Authority to Op-) Application No. 821
erate Between Washington)
National Airport, Dulles Inter-) Docket No. 256
national Airport and points in)
the Washington Metropolitan Area)

By Application No. 821, dated November 28, 1973, as amended, Airway Ground Transportation Services, Inc. (Airway Ground) seeks temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact, to conduct bus and limousine service for passengers and their baggage between the Washington National Airport (National), or the Dulles International Airport (Dulles), on the one hand, and, on the other, points within the Metropolitan District, as defined in the Compact. Airway Ground is a wholly-owned subsidiary of Hudson General Corporation (Hudson). Pursuant to Order No. 1289, served December 6, 1973, a hearing was held on December 18, 19, and 20, 1973, to determine the factual bases, if any, for Airway Ground's allegation that there exists an immediate and urgent need for the proposed service to a point or points or within a territory having no carrier service capable of meeting such need. Greyhound Airport Service, Inc. (Greyhound) ^{1/} was made a party to this proceeding by Order No. 1289 and appeared at the hearing as a protestant. Executive Limousine Service, Inc.

^{1/} Greyhound holds Certificate of Public Convenience and Necessity No. 7, authorizing charter operations and special operations between National or Dulles, on the one hand, and, on the other, points in the Metropolitan District, except points in Virginia.

(Executive)^{2/} and Division 1528, Amalgamated Transit Union, AFL-CIO ^{3/} appeared at the hearing as intervenors.

Airway Ground's proposed tariff, as amended, which was filed with the application, and the supporting testimony of record, show that Airway Ground would conduct the proposed economy airport service in buses between Dulles and the Mayflower Hotel, Connecticut Avenue and DeSales Street, N.W., and the Washington Hilton Hotel, 1919 Connecticut Avenue, N.W., on a daily schedule, operating every half-hour from 6:00 A.M. to 12:00 Midnight. Furthermore, Airway Transit, Inc. (Airway Transit), a sub-contractor of Hudson, would conduct the proposed group riding door-to-door sedan service between National and specified points in Maryland, and between National and points in described zones in the District of Columbia, and between Dulles and specified points in Maryland. Airway Transit is not a party to the application. The tariff also specifies emergency charter service and charter service. However, there is no statement in the record upon which to determine whether Airway Ground or Airway Transit, or both, would perform the proposed emergency charter service or charter service or what type of vehicle would be used for such service.

I.

Under Title II, Article XII, Section 4(d)(3) of the Compact, the Commission must make two findings upon which it may base its decision to grant an applicant temporary authority to provide a specific service. First, we must find that there exists an immediate and urgent need for the proposed service to a point or points or within a territory. Second, we must find that there is no carrier service capable of meeting such need. Necessarily, there

^{2/} Since this hearing, the Commission has granted Executive temporary authority to transport passengers and their baggage between Dulles, on the one hand, and, on the other, the Burlington Hotel, and between Dulles, on the one hand, and, on the other, the Quality Inn-Capitol Hill with an intermediate stop at the L'Enfant Plaza Hotel. See Order No. 1292, served December 21, 1973.

^{3/} Division 1528 is the bargaining representative of employees of Greyhound.

must be a sufficient factual record to support these findings.

Airway Ground alleges in its application that there would be an immediate and urgent need for the proposed service after December 31, 1973, because no other carrier would be properly authorized to operate at National and Dulles. It contends that the need for the proposed service for 180 days commencing January 1, 1974, can be deduced from two factors: (1) the number of passengers transported by Greyhound, ^{4/} the authorized carrier now performing a service similar to that proposed to be conducted under temporary authority, and (2) the projected number of persons who might use the airports during the period January 1, 1974 through June 30, 1974. On the basis of this evidence, we agree that there is an existing need for transportation services to provide members of the travelling public a satisfactory means by which they can travel between National or Dulles and points in the Metropolitan District.

The basis for Airway Ground's contention that the need for the proposed service is immediate and urgent is the presumption that there would be no carrier service available after December 31, 1973. The evidence relied upon by Airway Ground to substantiate this contention consists primarily of a concession contract between the Federal Aviation Administration (FAA) and Hudson. Hudson has

^{4/} The statistical information filed with this Commission by Greyhound contains a record of the number of revenue passengers carried on a monthly and an annual basis. The following table is a summary of portions of the statistical information which is relevant to this proceeding.

Revenue Passengers Carried

<u>Year to Date</u>	<u>Coach</u>	<u>Limousine</u>
November 30, 1973	264,632	182,298
June 30, 1973	150,661	107,446
December 31, 1972	298,134	240,008
December 31, 1971	299,307	274,232
December 31, 1970	398,933	333,814

assigned the concession contract to Airway Ground. According to Airway Ground, the concession contract grants Hudson, and in turn itself, exclusive right to provide the transportation services for which Airway Ground seeks temporary authority from us. Further, Airway Ground submits that Greyhound would not be able to operate upon the airports during the period of the temporary authority, because Greyhound's current five-year concession contract with the FAA expires December 31, 1973. Greyhound contends that it has made an offer to the FAA for a new concession contract beginning January 1, 1974, but has not been notified by the FAA of any action thereon. Moreover, Greyhound submits that it holds a certificate of public convenience and necessity from this Commission which authorizes it to provide services which would adequately meet the need upon which Airway Ground bases its temporary authority application.

On the basis of the evidence of record, we are of the opinion that the allegation that there will be no carrier service available after December 31, 1973, is untenable. No evidence was submitted by Airway Ground that Greyhound's certificate of public convenience and necessity authorizing it to operate would be or should be revoked. Furthermore, we are unable to conclude that, as of January 1, 1974, Greyhound will not be a properly certificated carrier authorized to provide services between Dulles or National and those points in the Metropolitan District set forth in its current tariff on file with this Commission. Greyhound is obligated by the provisions of the Compact and by the Commission's Rules and Regulations to render reasonable, continuous and adequate service to the members of the public. Accordingly, we find that Greyhound will be authorized by this Commission to provide services which would adequately meet the need upon which Airway Ground bases its application for temporary authority. Therefore, Application No. 821 of Airway Ground must be denied.

II.

Assuming arguendo that we were to find that there is an immediate and urgent need for the proposed service which no carrier service is capable of meeting, Application No. 821 of Airway Ground in its present form could not be granted in its entirety. The application, as drawn, seeks temporary authority to conduct bus and limousine service between National or Dulles

and points in the Metropolitan District. The applicant is Airway Ground, which proposes to conduct only the economy airport service. Door-to-door sedan service would be performed by Airway Transit pursuant to a contract with Hudson.

Although Article XII, Section 4(d)(3) does not refer to a person or a carrier in conferring upon this Commission jurisdiction to grant temporary authority, it is evident from our reading and understanding of the applicable provisions of the Compact that temporary authority could be granted only to a person seeking to perform transportation for hire by motor vehicle. See Compact, Article XI, Section 2. The provisions of the Compact seemingly would apply to Airway Transit because it would be the carrier engaged in transportation for hire by motor vehicle between points in the Metropolitan District. See Compact, Article XII, Sections 1(a) and 2(a) and (e). Moreover, the Compact does not provide for the fractionalization of operating authority. Rather, Article XII, Section 12 (a)(2) expressly prohibits any person controlling a carrier from contracting to operate any substantial part of the properties of another carrier without approval of this Commission. Although a contract to operate another carrier's authority may be permissible, a carrier or the person controlling the carrier must receive our approval prior to rendering the service. Furthermore, Article XII, Section 4(a) prohibits any person from engaging in transportation for hire unless there is in force a certificate of public convenience and necessity issued by this Commission authorizing such person to perform such transportation for hire. ^{5/} Accordingly, we conclude that Airway Transit would be a carrier subject to the provisions of the Compact. As a carrier subject to the provisions of the Compact it could not perform the proposed door-to-door sedan service until the Commission approved its contract or granted it temporary authority to provide the proposed service.

III.

Intervenors, Executive and Division 1528, did not oppose the

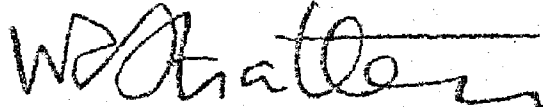
^{5/} Of course, the Compact permits the performance of such transportation for hire after Commission approval for not more than an aggregate of 180 days when there is an immediate and urgent need for such service and no carrier service is capable of meeting such need.

temporary authority application of Airway Ground. Rather, they sought the imposition of described restrictions upon any grant of temporary authority. See Compact, Article XII, Section 4(b). Having found that the temporary authority application should be denied, we are of the opinion that discussion of the proposed restrictions is not necessary.

We have considered the other matters pressed by the parties but find that they do not warrant action contrary to that which we now direct.

THEREFORE, IT IS ORDERED that Application No. 821 of Airway Ground Transportation Services, Inc., for temporary authority pursuant to Title II, Article XII, Section 4(d)(3) of the Compact, to conduct bus and limousine service for passengers and their baggage between Washington National Airport or Dulles International Airport, on the one hand, and, on the other, points within the Metropolitan District, as defined in the Compact, be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION:

A handwritten signature in dark ink, appearing to read "W. R. Stratton", with a horizontal line drawn across the middle of the signature.

WILLIAM R. STRATTON
Commissioner